

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:00-CR-181-BR
No. 5:11-CV-529-BR

CHESNEY DEVON FAIRCLOUGH,)
 Petitioner,)
)
 v.)
)
UNITED STATES OF AMERICA,)
 Respondent.)

ORDER

This matter is before the court on the government’s motion to dismiss or, in the alternative, for summary judgment on petitioner’s § 2255 motion. Despite having received an extension of time, petitioner has not filed a response to the government’s motion.

Petitioner asserts one claim, that is, he is not receiving credit on his federal sentence for time served in state custody on an unrelated murder conviction. (Pet., DE # 67, at 4, 12.) The court agrees with the government that because this claim challenges the execution of petitioner’s sentence, the claim must be filed, if at all, in a petition under 28 U.S.C. § 2241 in the district court where petitioner is confined, which is the Middle District of Georgia. See United States v. Miller, 871 F.2d 488, 489-90 (4th Cir. 1989) (holding that “[a] claim for credit against a sentence attacks the computation and execution of the sentence rather than the sentence itself” and thus relief must be sought under § 2241 in the district of confinement).

The government’s motion to dismiss is ALLOWED, and the § 2255 motion is DISMISSED. The court finds that petitioner has not made “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Pursuant to Rule 11(a) of the Rules

Governing Section 2255 Proceedings, a certificate of appealability is DENIED.

This 17 July 2012.

A handwritten signature in green ink, reading "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt

Senior U.S. District Judge